

Issue: Access to the Grievance Procedure; Ruling Date: June 7, 2018; Ruling No. 2018-4739; Agency: Department of Behavioral Health and Developmental Services; Outcome: Access Denied.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

ACCESS RULING

In the matter of the Department of Behavioral Health and Developmental Services
EEDR Ruling Number 2018-4739
June 7, 2018

On May 24, 2018, the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) received a dismissal grievance submitted by the grievant. Because the grievant had submitted a resignation prior to initiating her grievance, the grievant’s former employer, the Department of Behavioral Health and Developmental Services (the “agency”), challenges whether she has access to the grievance procedure to initiate this grievance.

The grievant was employed at one of the agency’s facilities as a Direct Service Associate III. The agency has represented that the grievant was informed by management that it was conducting an investigation to determine whether she had violated agency policy by engaging in an inappropriate relationship with a resident at the facility. On May 23, 2018, the grievant submitted a letter of resignation, which stated that she resigned “affective [sic] immediately.” The grievant subsequently submitted a dismissal grievance directly to EEDR challenging the “accusation of [an] inappropriate relationship with [a] resident” and seeking to have her “job back and [an] apology.”

The General Assembly has provided that “[u]nless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure”¹ Upon the effective date of a voluntary resignation from state service, a person is no longer a state employee. Thus, to have access to the grievance procedure, the employee “[m]ust not have voluntarily concluded his/her employment with the Commonwealth prior to initiating the grievance.”² EEDR has long held that once an employee’s voluntary resignation becomes effective, he or she is not covered by the grievance procedure and accordingly may not initiate a grievance.³

In this case, there is no dispute that the grievant voluntarily resigned her employment with the agency on May 23, 2018, after management notified her that it was investigating an instance of potential misconduct.⁴ The grievant filed her grievance with EEDR after submitting

¹ Va. Code § 2.2-3001(A).

² *Grievance Procedure Manual* § 2.3.

³ *E.g.*, EDR Ruling No. 2005-1043.

⁴ The agency did not present the grievant with a formal due process notice advising her of its intent to take disciplinary action and, indeed, EEDR has reviewed nothing to indicate whether the investigation continued after the grievant resigned.

her resignation. As such, the grievant was not an employee of the Commonwealth of Virginia when she initiated the grievance and, thus, does not have access to the grievance procedure. Because the grievant does not have access to initiate this grievance, EEDR will not process the grievance further and the file will be closed.

EEDR's access rulings are final and nonappealable.⁵



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⁵ Va. Code § 2.2-1202.1(5).